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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,660	09/08/2003	Klaus-Hinrich Borchers	4568	1986

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EXAMINER

LE, TAN

ART UNIT PAPER NUMBER

3632

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/658,660

Applicant(s)

BORCHERS, KLAUS-HINRICH

Examiner

Tan Le

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 8-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-7, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This is the first office action for application serial number 10/10/658,660. This application contains 21 claims numbered 1-21.

2. Applicant's election without traverse of the species of Figs. 2-3, claims 1, 2, 4-7 and 20-21 in the reply filed on 10/28/04 is acknowledged.

Currently claims 1-2, 4-7 and 20-21 are readable to the elected species. An examination as follows:

Claims 3 and 8-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file. Note that the Priority of an earlier application: No. 102 41 573.0, filed on September 7, 2002 in Federal Republic of Germany is hereby expressly claimed under 35 U.S.C. 119. The filing of this Application on Monday, September 8, 2003 is timely since September 7, 2003 was on a Sunday.

4. Page 1, lines 5-8, incorporation by reference to a foreign application is improper.

Page 8, line 5, "PFTE" must describe what it stands for.

Page 8-9, Applicant describes a plurality of guard hoses as "1, 2, 3... n). This should be changed to -- 2, 3...n -- because a plurality should be more than one.

Page 11, line 3, "Land L" should be changed to -- length L --.

Claim 4, line 4, "a pair" propose to be replaced with – said one pair – to make the claim clearer.

In claim 1, the description of a "1, 2...n)" (for a plurality of guard hoses) and in claim 2, the description of "n" or "n-1" (for spacers), these descriptions should be taken out. Only "reference number" should be allowed.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-2, 4-7 and 20-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claims 6-7, each recites the limitation " the same length" in line 2. There is insufficient antecedent basis for this limitation in the claims. Also the phrase "the same length" is unclear as to the same length of what that Applicant is referring to. Propose to change to -- a same length to each other --.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent No. 4,601,447 to McFarland.

MacFarland discloses a conduit spacer anchoring system comprising a plurality of guard hoses (Fig. 3 for example), each guard hose (14) having an inner diameter, each guard hose of said plurality of guard hoses (in operational state) comprising an outwardly facing first contour (of the pipe), and at least one spacer (13) positioned between two neighboring guard hoses of the plurality of guard hoses, the at least one spacer having a second contour (22) matching said first contour of said guard hoses for spacing said plurality of guard hoses from one another.

Regarding claims 20-21, McFarland device in an operational mode or assembly mode can be broadly interpreted as one integral piece and the interconnection which holds the spacer to the holder can also broadly interpret as a tongue and groove connection (at 26, 28).

Claims 1-2, 4-7 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent No. 1,098,077 to Annison.

Annison discloses a locking bar and sheeting for construction work, comprising a plurality of sheeting and posts guards which can be used for guard hoses ©, each guard hose having an inner diameter, each guard hose of said plurality of guard hoses (in

operational state) comprising an outwardly facing first contour, and at least one spacer (b) positioned between two neighboring guard hoses of said plurality of guard hoses, said at least one spacer having a second contour matching said first contour of said guard hoses for spacing said plurality of guard hoses from one another.

Regarding claim 2, Annison also discloses a number of guard hoses, and a number of spacers arranged between neighboring guard hoses, and wherein each of said spacers is positioned along a straight length of two neighboring guard hoses.

Regarding claim 4, least one spacer has top and bottom surfaces opposite each other and side surfaces opposite each other in first and second pairs, each side surface of said one pair of said side surfaces having said second contour matching said first contour of a respective guard hose.

Regarding claim 5, the first contour (of c) is convex and wherein said second contour (of spacer b) is concave so that the convex first contour partly encircles the convex second contour.

Regarding claims 6 and 7, the subject matter of claims 6-7 also readable over Annison as evidently shown on Fig. 1-4 or 8, which shows each of said side surfaces has a same length to each other in a pair and said top and bottom surfaces are substantially squares and the side surfaces are rectangles, wherein said side surfaces forming said first pair have the same length, and wherein said side surfaces forming said second pair have a length shorter than said same length, and wherein the second contours are provided in said squares.

Regarding claims 20-21, Annison device in an operational mode or assembly mode can broadly interpret as one integral piece and the interconnection, which holds the spacer to the holder, can interpret as a tongue and groove connection.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US2004/0045618 to Borchers.

4,099,626 to Magnussen, Jr.

1,821,234 to Parker

3,523,667 to Guerrero

2,915,580 to Gill et al.

859,295 to T. Hill.

The above patents disclose various types of conduit spacer systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (703) 305-8244.

The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Tan Le', is positioned above the typed name.

Tan Le  
Patent examiner  
January 18, 2005.